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No. 290

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**In the Supreme Court of the United States**

OCTOBER TERM, 1952

ERNEST A. WATSON and M. GLADYS WATSON,  
*Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE

On Petition for a Writ of Certiorari to the United States Court  
of Appeals for the Ninth Circuit.

MEMORANDUM FOR THE RESPONDENT

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### OPINIONS BELOW

The opinion of the Tax Court (R. 19-50), and the dissenting opinion (R. 50-55), are reported at 15 T.C. 800. The opinion of the Court of Appeals (R. 132-137) is reported at 197 F. 2d 56.

## JURISDICTION

The judgment of the Court of Appeals (R. 138) was entered on May 29, 1952. The petition for a writ of certiorari was filed on August 25, 1951. By order of Mr. Justice Burton dated September 16, 1952, the time for filing the Commissioner's response to the petition for a writ of certiorari was extended to November 26, 1952. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

## DISCUSSION

This case involves the question whether, on the sale of an orange grove, consisting of land, trees and an unmaturing crop of oranges, the gain should be apportioned between ordinary income and capital gain. The court below affirmed the decision of the Tax Court which held that, to the extent that the taxpayers' profit for the year 1944 was attributable to the value of the growing crop, the gain should be taxed as ordinary income. Its decision is in conflict with the decisions of the Court of Appeals for the Fifth Circuit in *Owen v. Commissioner*, 192 F. 2d 1006, and of the Court of Appeals for the Tenth Circuit in *McCoy v. Commissioner*, 192 F. 2d 486.

While this problem will not arise for taxable years beginning with 1951 because of the addition to the Internal Revenue Code of Sections 24(f) and 117(j)(3) by Section 323 of the Revenue Act of 1951, c. 521, 65 Stat. 452, the Bureau of In-

ternal Revenue has informed us that the problem is involved in forty-five pending cases with total tax liabilities in excess of \$1,300,000. We are also informed that the same problem, as it bears upon the tax liability of a purchaser of such property, is involved in ten cases with total tax liabilities in excess of \$1,000,000..

For these reasons the granting of the petition for a writ of certiorari is not opposed.

Respectfully submitted,

ROBERT L. STERN,  
*Acting Solicitor General.*

NOVEMBER, 1952.